



## Residual early childhood services

# Declaration of fitness and propriety

## Residual Early Childhood Services

### DECLARATION OF FITNESS AND PROPRIETY

*Education and Early Childhood Services (Registration and Standards) Act 2011*

Part 3 and Schedule 2

## Important information before you begin

You are required to fill in this form if you are:

- an individual applying to be an approved provider of education and care services
- an individual who will have 'management or control' of an education and care service (operated by a non-individual provider) as defined by s5 National Law:
- an officer of a body corporate, within the meaning of the Corporations Act 2001 of the Commonwealth, who is responsible for managing the delivery of an education and care service
- a member of the executive committee of an eligible association who has responsibility, alone or with others, for managing the delivery of an education and care service
- a partner in a partnership who has responsibility, alone or with others, for managing the delivery of an education and care service
- in any other case, a person who has responsibility, alone or with others, for managing the delivery of an education and care service

Consideration of 'management or control' responsibilities may arise:

- when a new provider is seeking approval, or
- when the membership of the governing body of an existing approved provider is changing/has changed.

Please refer to the Explanatory Notes when considering whether you are a person with 'management or control' of an education and care service.

If you are seeking to have a new provider approved, please submit this form with an Application for Provider Approval, available on [www.esb.com.au](http://www.esb.com.au)

## Explanatory Notes

### An Applicant Must be a Fit and Proper Person

Under s 12 of the National Law:

1. An applicant who is an individual must satisfy the Regulatory Authority that the applicant is a fit and proper person to be involved in the provision of an education and care service.
2. If the applicant is not an individual, the applicant must satisfy the Regulatory Authority that:
  - Each person who will be a person with management or control of an education and care service to be operated by the applicant is a fit and proper person to be involved in the provision of an education and care service, and
  - The applicant is a fit and proper person to be involved in the provision of an education and care service.
3. The Regulatory Authority must be satisfied that each person with management or control of a service to be operated by the applicant is 'fit and proper' AND that the non-individual applicant (corporation, eligible association or partnership) itself is 'fit and proper'. In the case of a corporation, this would involve consideration of:
  - the fitness and propriety of persons with management or control – which may include some or all of the board and, potentially, other key officers of the corporation, and
  - the fitness and propriety of board members – who, together, control the corporation.

### Who is a Person with Management or Control?

Section 5(1) of the National Law states that a 'person with management or control' in relation to an education and care service means:

- If the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the Corporations Act 2001 of the Commonwealth who is responsible for managing the delivery of the education and care service, or
- If the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service, or
- If the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service, or
- In any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service.

### Who is an 'Officer' under the Corporations Act 2001?

Section 9 of the Corporations Act 2001 states that the 'officer' of a corporation means:

- A director or secretary of the corporation, or
- A person who:
  - makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation, or
  - has the capacity to affect significantly the corporation's financial standing, or
  - in accordance with whose instructions or wishes the directors of the

corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors of the corporation), or

- A receiver, or receiver and manager, of the property of the corporation, or
- An administrator of the corporation, or
- An administrator of a deed of company arrangement executed by the corporation, or
- A liquidator of the corporation, or
- A trustee/other person administering a compromise or arrangement made between the corporation and someone else.

### **What is the Difference between a Person in 'Day-to-Day Charge' and a Person with 'Management or Control'?**

A person with 'management or control' is someone:

- Who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity, or
- Who has the capacity to affect significantly the entity's financial standing.

Therefore, while a person – such as a centre manager or nominated supervisor – may have 'day-to-day charge' of a service, they may not have 'management or control'.

Individuals should consider whether they satisfy one of these thresholds to determine whether they are required to complete this Form.

## Declarant Information

1. Please complete the following

Title:	First Name:
Middle Name:	Last Name:
Date of Birth:	Place of Birth:
Phone number:	
Mobile number:	
Fax number:	
Email:	

2. Residential Address

Address line 1:	
Address line 2:	
Suburb/Town:	
State/Territory:	Postcode:

3. Postal Address

As above: <input type="checkbox"/>	
Address line 1:	
Address line 2:	
Suburb/Town:	
State/Territory:	Postcode:

4. Please provide details of any former name(s) or other name(s) you may be known by

(Please attach evidence of change of name, such as a copy of a marriage or birth certificate)


5. Please attach a copy of one of the following as evidence of your identity:

- current passport, or
- current driver's licence, or
- current proof of age card

The regulatory authority may request additional types of identification

6. In the previous three years have you held any role with an education and care service or a children's service in any jurisdiction:

- No
- Yes (if yes, please provide details of all roles in the table below and attach paper for further entries if required.)

Name and Address of Service	Nature of employment	Length of employment

7. For applicants completing this declaration for the purposes of a residual provider approval for South Australia.

Please attach documentary evidence of your current Working with Children Check obtained through the Department of Human Services. If you are a registered teacher you will need to provide proof of your current teacher's registration certificate.

8. Have you lived and/or worked outside Australia any time within the previous 3 years?

- No
- Yes (if yes, please provide an overseas criminal history statement):


9. Have you ever been subject to a formal disciplinary proceeding or action under an education law of another jurisdiction?

- No
- Yes (if yes, please provide an overseas criminal history statement):


10. Have you ever had any of the following actions taken against you under the A New Tax System

(Family Assistance) (Administration) Act 1999 of the Commonwealth in relation to a child care service:

- Any sanction imposed under Section 200 of that Act
- Any suspension imposed under Section 201A of that Act
- Any infringement notice given under Section 219TSI of that Act

No

Yes (if yes, Please provide details including the date and type of action or proceeding and the outcome):


11. Have you ever been subject to a formal disciplinary proceeding or action under an education law of any Australian state or territory?

No

Yes (if yes, Please provide details including the date and type of action or proceeding and the outcome):


12. Do you have the management capability to operate an education and care service in accordance with this Law?

No

Yes (please attach evidence of your management capability):

**The Regulatory Authority may consider evidence of the management capability of a person when assessing their fitness and propriety.**

**Evidence can include a resume or part of a resume, a written reference or qualification/certification.**

**Evidence of management capability does not need to relate only to education and care services, or qualifications in education and care.**

**The consideration here is ‘management capability’ and so evidence may be related to any previous expertise, experience or qualification in a leadership, governance, administrative or management role in:**

- **A business, or**
- **A not-for-profit organisation, or**
- **A sporting or social club, or**
- **A community-based committee.**

**This may include experience gained as a volunteer.**

## Who May Sign?

- **Individuals: The individual Applicant.**
- **Company: Two directors of the company, or a director and company secretary, or if sole proprietor the sole director.**
- **Incorporated association: The public officer and one other member of the management committee.**
- **Cooperative: Two directors of the cooperative, or a director and one other officer of the cooperative.**
- **Partnership: A managing partner who is authorised to sign on behalf of the partnership. This signature binds all partners.**
- **Corporation/Government School Council: Signed in accordance with rules of the corporation/council.**

## Applicant Declaration

I, \_\_\_\_\_ (insert full name of person signing the declaration)

of, \_\_\_\_\_ (insert address)

am \_\_\_\_\_ (insert position/title of Applicant for example, Proprietor, Director, Partner, President)

and I am authorised to make this declaration on the Applicant's behalf.

I declare that:

1. The information provided in this form (including any attachments) is true, complete and correct
2. I have read, understood and agree to the conditions and the associated material contained in this form
3. I understand that the regulatory authority has the right (but is not obliged) to act in reliance upon the contents of this form, including its attachments
4. I have read and understood a provider's legal obligations under the Education and Care Services National Law
5. The regulatory authority is authorised to verify any information provided in this form
6. Some of the information provided in this form may be disclosed to the Commonwealth for the purposes of the Family Assistance Law and may be disclosed to other persons/authorities where authorised by the Education and Care Services National Law or other legislation, and
7. I am aware that under the Education and Care Services National Law penalties apply if false or misleading information is provided.

Signature of person making the declaration: \_\_\_\_\_

Signed at: \_\_\_\_\_ (address) on the \_\_\_\_\_ (date)

Please submit this form along with any required documentation to the regulatory authority.

Education Standards Board  
GPO Box 1811  
ADELAIDE SA 5001

### Enquiries to:

Email: [educationstandardsboard@sa.gov.au](mailto:educationstandardsboard@sa.gov.au)

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